

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 KOBE PINKNEY,
4 Plaintiff

5 v.

6 MEADVILLE, PENNSYLVANIA
7 and PATROLMAN JARED FRUM,
8 Defendants

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No. 1:19-CV-167-RAL

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10 Transcript of the proceedings on July 15, 2022,
11 United States District Court, Erie, Pennsylvania,
12 before Magistrate Judge Richard A. Lanzillo.

13
14 APPEARANCES:

15 For the Plaintiff: Earl Dubois Raynor, Jr., Esquire
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 Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.



1 P R O C E E D I N G S

2 9:58 a.m.

3 (All parties present in open court.)

4 THE COURT: All right. We are here in the matter of
5 Kobe Pinkney versus Meadville, Pennsylvania and Patrolman
6 Jared Frum, at Docket No. 19-cv-167 on the Erie Division
7 docket.

8 Pursuant to the remand instructions and mandate
9 of the U.S. Court of Appeals of the Third Circuit, I scheduled
10 this hearing and argument to determine whether the Plaintiff,
11 Kobe Pinkney, has waived or forfeited his right to challenge
12 the authenticity and completeness of the recording of the
13 witness interview of Duncan Freeland, which has been filed of
14 record at Docket No. 93.

15 If I were to determine that the Plaintiff has
16 not waived or forfeited his right to challenge the recording's
17 authenticity for completeness, then the hearing will proceed
18 immediately to determine whether the recording is, in fact,
19 authentic and complete.

20 Before I proceed further, for the record, let's
21 have the appearances of counsel.

22 Attorney Raynor, as I introduced myself to you
23 earlier before we convened —

24 MR. RAYNOR: Good morning, Your Honor. Earl Raynor
25 on behalf of Kobe Pinkney.

1 THE COURT: All right. And, Attorney Carey, good
2 morning again.

3 MR. CAREY: Good morning, Your Honor. Patrick Carey
4 on behalf of Jared Frum and the City of Meadville.

5 THE COURT: All right. Very well.

6 Now, prior to this proceeding, I issued a
7 scheduling order which directed the parties to file a list of
8 witnesses, if any, each intended to call, as well as lists of
9 any exhibits each party wished to offer at this hearing.

10 I received the Defendant's exhibit and witness
11 list, but I take it from the brief and response submitted on
12 behalf of Mr. Pinkney, that, Attorney Raynor, your primary
13 approach today will be by way of argument.

14 Is that correct?

15 MR. RAYNOR: Yes, Your Honor. Yes.

16 THE COURT: All right. Very well. I understand.

17 All right. To expedite things, there are just
18 a couple of record matters that I thought would be useful to
19 confirm with counsel before I turn to Attorney Carey for his
20 presentation.

21 Attorney Raynor, I just -- I want to confirm,
22 you agree that your Second Amended Complaint which was filed
23 at ECF No. 83 on May 6th of 2020, in fact, refers to and
24 quotes from Officer Frum's April 10, 2019 incident report
25 concerning the assault on Mr. Happel. That's -- and, in fact,

1 it's specifically Paragraph 33 of the Second Amended
2 Complaint?

3 MR. RAYNOR: Yes, Your Honor.

4 THE COURT: All right. And the incident report was
5 attached to the Second Amended Complaint as Exhibit A. Is
6 that right?

7 MR. RAYNOR: Yes, Your Honor.

8 THE COURT: All right. And that incident report
9 states that Officer Frum met with Duncan Freeland on April 10,
10 2019, and that, quote, "Freeland agreed to give an
11 audio-recorded statement about what he saw," close quote.
12 That's — you can check, but that's what's recited in
13 Paragraph 33 of the Second Amended Complaint.

14 MR. RAYNOR: Yes, Your Honor.

15 THE COURT: All right. So just to confirm, at the
16 time you filed the Second Amended Complaint at least, you knew
17 that there was an audio-recorded statement. You knew that
18 that existed at that time, or at least that is what Officer
19 Frum's incident reported stated.

20 MR. RAYNOR: That is correct. I asked if he filled
21 out a full detailed incident report. I thought the incident
22 report simply -- that it represented the totality of what was
23 stated on the audio tape. That was my impression. And so
24 that's why I thought that by attaching the summary -- by
25 attaching the incident report itself, that I covered the audio

1 tape, since that interview was recorded by Officer Frum.

2 THE COURT: All right. I understand. Let me ask
3 you, when did you first receive an actual copy of the
4 recording of the audio tape?

5 MR. RAYNOR: I never received a copy of the
6 recording of the audio tape.

7 THE COURT: All right.

8 MR. RAYNOR: I assume that it's verbatim with the
9 incident report.

10 THE COURT: So at this point -- have you received a
11 copy of the audio tape at this point or a copy of the
12 transcript of it?

13 MR. RAYNOR: Well, I received the -- a brief of
14 Officer Frum and Meadville, Pennsylvania, which included the
15 transcript of the audio tape.

16 THE COURT: Right. All right.

17 MR. RAYNOR: So I have that, yes.

18 THE COURT: All right. So is that the first time
19 that you saw either a transcript of the recording or the
20 actual disk or recording itself?

21 MR. RAYNOR: Yes.

22 THE COURT: I mean, it was filed of record on
23 May 28th, 2021 at ECF 93, right?

24 MR. RAYNOR: Yes, it was filed of record. I should
25 have got it. I did not actually get it. I had the incident

1 report, and it recorded verbatim the audio tape. I thought
2 the audio tape was just —

3 THE COURT: I understand. All right. I want to
4 give equal treatment to Attorney Carey at this point, though,
5 and ask a couple questions, confirm a few things on the record
6 as well.

7 Attorney Carey — and I don't mean to walk you
8 through the docket if you don't have a copy handy. We have
9 one. But here's what I pieced together, and I want to see if
10 you agree with me:

11 Mr. Pinkney's original Complaint was filed back
12 on June 9 of 1990 [sic]. You don't actually have to agree
13 with that. I mean, obviously, it's a matter of record. And I
14 noted that Officer Frum and City of Meadville moved to dismiss
15 that Complaint or, in the alternative, for summary judgment on
16 August 20 of 2019. That's at ECF Nos. 16 and 17.

17 It appeared to me, though, that in connection
18 with that initial motion, there was no mention of the audio
19 recording.

20 MR. CAREY: I don't know if it was mentioned, but it
21 certainly was not produced as an exhibit.

22 THE COURT: Okay, thank you.

23 Now, then in response to that Motion to
24 Dismiss, Mr. Pinkney filed a Motion for Leave to File an
25 Amended Complaint, which I granted. And Mr. Pinkney filed his

1 Amended Complaint on October 10 -- it's either October 10 or
2 October 13. There is some duplicate entries on the docket for
3 the Amended Complaint. But in or around the 10th or 13th of
4 2019 we have an Amended Complaint at Docket No. 49 or 50.

5 That prompted the Motion to Dismiss the Amended
6 Complaint on October 14, 2019. And that motion -- in the body
7 of the motion itself, it included a list of, quote,
8 "indisputably authentic documents", but did not reference or
9 include as an exhibit the audio recording.

10 Is that correct, Attorney Carey?

11 MR. CAREY: The point that I think you're getting to
12 is did we attach the audio recording to that Motion to
13 Dismiss. I do not think that we did.

14 THE COURT: Okay. And putting aside the reference
15 to the audio in the -- putting the fact that the Attorney Frum
16 [sic] stated in his investigation report -- and I believe also
17 in his Affidavit of Probable Cause that there was an
18 audio-recording of a witness. There was no -- the Defendants
19 did not at that time invoke the audio recording as a basis for
20 disputing Mr. Pinkney's claim, I guess is my question.

21 MR. CAREY: Fair enough.

22 THE COURT: All right. And then on April 16th,
23 2020, Officer Frum, through counsel, filed a Response in
24 Opposition to Pinkly's Motion for Relief from Judgment at
25 Docket No. 76. That's where, Attorney Raynor, as you will

1 recall, I originally dismissed the claims against Officer Frum
2 based upon certain language in your Complaint which had
3 indicated that Mr. Freeland had specifically and definitively
4 identified Mr. Pinkney as the person who attacked Mr. Happel.

5 You then moved for relief from judgment, and
6 the record was then supplemented by way of Amended Complaint
7 to include -- or it was a proposed Amended Complaint to
8 include more specific information concerning what was said or
9 allegedly said by Mr. Freeland. The Defendants opposed your
10 motion for me to open that part of the judgment.

11 And, Attorney Carey, I'm correct, am I not,
12 that in opposing that motion, the Defendant still didn't raise
13 this audio recording?

14 MR. CAREY: Yes. The first time we -- the first
15 time we -- I don't know what you mean by "raised". But the
16 first time we produced a copy of the actual recording was in
17 response to the Second Amended Complaint.

18 THE COURT: Okay. Right. And I guess my point
19 is -- or maybe not my point, but my question is: At any time
20 prior to the Motion to Dismiss the Second Amended Complaint
21 did the Defendants ever raise the existence of an audio
22 recording as a basis for seeking the dismissal of the
23 Plaintiff's claims against Officer Frum?

24 MR. CAREY: At no time before we filed the Motion to
25 Dismiss Second Amended Complaint did we rely upon the actual

1 recording, the actual audio recording as a basis to seek
2 dismissal.

3 THE COURT: Okay.

4 MR. CAREY: Prior to that, if you want to know
5 why —

6 THE COURT: Sure.

7 MR. CAREY: -- it was more streamlined and less
8 complicated to go with what the Plaintiff had filed in terms
9 of the allegations in the Plaintiff's Complaint and the
10 attachments, which was the Affidavit of Probable Cause itself.
11 I think -- I don't think that he produced a complete copy, and
12 we did, but --

13 THE COURT: You did, yeah. And that was -- I don't
14 mean to interrupt you, but that -- I must admit, Attorney
15 Raynor, that has been a source of some annoyance on my part,
16 because, you know, I -- in my first decision on this, I
17 pointed out that you were missing Page 2 of the Affidavit of
18 Probable Cause. And then the next incarnation of the
19 Complaint, it was missing again, and the next incarnation of
20 the Complaint it was missing again. And the Defendants
21 provided that second part of the Affidavit of Probable Cause
22 or Complaint against -- Criminal Complaint, which actually is
23 the meat, it's the substance of what we're talking about here.

24 I don't mean to digress there, but --

25 MR. RAYNOR: My apologies, Judge.

1 THE COURT: Yeah, I understand. But, you know, that
2 attention to detail in a case like this is important.

3 MR. RAYNOR: Yes, sir.

4 THE COURT: All right. Enough said about that.
5 Attorney Carey, I interrupted you. Go ahead.

6 MR. CAREY: So we felt that there was a sufficient
7 legal basis based upon what was pled by the Plaintiff and the
8 documents that they attached, although we supplemented to
9 provide complete copies, that it justified dismissal of all
10 claims against the City and against Officer Frum.

11 Believe me, Judge, I understand that when a
12 Defendant files a Motion to Dismiss and attaches extraneous
13 materials, it gets murky at that point as to what the Court
14 should do. I understand that. And that's why -- he produced
15 these documents. I had no -- I felt no problem in producing a
16 complete version and saying, okay, here's a complete version;
17 as a matter of law, it should be dismissed.

18 So there was no reason, I guess, at that point
19 for us to attach the actual recording.

20 THE COURT: I understand. And the reason I'm asking
21 these questions in assessing whether there has been a knowing
22 waiver or forfeiture of the right to dispute the authenticity,
23 accuracy, or completeness of this audio, I'm trying to
24 understand exactly when Attorney Raynor and his client,
25 Mr. Pinkney, were clearly on notice that this formed a

1 material aspect of the Defendant's position that the -- that
2 the claim should be dismissed. And then I have to look at how
3 much opportunity did you have to review it.

4 You know, the Circuit is clear -- I mean, the
5 opinion is crystal clear that the reference to the -- to an
6 audio recording by a witness for Mr. Freeland in an exhibit to
7 the Complaint is enough of a nexus -- it's enough to make it
8 integral to the Complaint. So I'm going to consider it. I
9 mean, there's -- that's the mandate. I'm going to consider
10 it. It is now part of the record.

11 But as to whether there's going to be a
12 forfeiture or a waiver of the right to dispute, you know, any
13 aspect of that recording, you know, it's kind of I need to
14 know what you knew and when, and then what opportunity did you
15 have to conduct discovery or any -- or otherwise investigate
16 the completeness or accuracy of the recording.

17 So that's the point of my questions. I
18 think -- I think I've got the background now. And I guess the
19 one part I didn't know from the docket is that you didn't
20 actually see a transcript of this, Mr. Raynor, until you
21 received one from the Defendants in connection with my
22 scheduling order. I'm going to scratch my head a little bit
23 about that. This was -- you know, it was featured pretty
24 prominently. And I don't review appellate submissions, but I
25 have received materials from the Defendants, and, you know, it

1 clearly was relied upon at the appellate level.

2 So I think I have those — those facts down.

3 MR. CAREY: Can I address something?

4 THE COURT: You may.

5 MR. CAREY: So Mr. Raynor says he never got a copy
6 of the recording. And I have — I don't know if you're
7 willing to see this, but I have a letter from my office to the
8 Clerk of Court, May 20, 2020, saying, "Enclosed please find a
9 disk marked as Exhibit 4 to our Motion to Dismiss --" this is
10 the Second Amended Complaint "-- Motion to Dismiss which was
11 filed this date with regards to the above-referenced matter."

12 THE COURT: It's filed of record. I mean, it's on
13 the docket.

14 MR. CAREY: It's cc'd to Mr. Raynor.

15 THE COURT: Yeah, I understand. And also, Mr.
16 Raynor, you're on our CM/ECF system, so you would have
17 received notice.

18 So, yeah, I don't -- there's no way I could
19 find other than --

20 (Discussion held off the record.)

21 MR. CAREY: I will -- I will tell you, I've made
22 copies of the recorded statement itself. I have it today.
23 Overkill, perhaps. I intended to introduce this as an
24 exhibit, even though it's already been filed.

25 But you know what, Judge, I would like the

1 record to reflect, I'm handing a copy to Mr. Raynor.

2 THE COURT: Let's make the letter here Exhibit —
3 Defendant's Exhibit A. I can't remember whether you
4 pre-numbered these or not. Did you?

5 MR. CAREY: I didn't pre-number anything.

6 THE COURT: I mean, you don't have a problem with
7 that letter, do you?

8 MR. RAYNOR: Not at all, Judge.

9 THE COURT: Yeah. The point is, you know, upon the
10 filing of that disk, it was a matter of record. Now, it was
11 filed -- if I'm recalling correctly, the actual Motion to
12 Dismiss at Docket No. 86 was filed on May 20.

13 MR. CAREY: Right.

14 THE COURT: And --

15 MR. CAREY: That was docketed -- the actual
16 statement was docketed May 28th.

17 THE COURT: Right. Yeah, I see that. And the
18 motion was filed and docketed on the 20th, and it included an
19 affidavit from Officer Frum identifying the audio recording I
20 believe as Exhibit 4. And then subsequently on May 28th, the
21 disk was received in the clerk's office and docketed at ECF
22 93.

23 All right. Does anyone dispute that chronology
24 as far as when things were filed?

25 MR. RAYNOR: No, Your Honor.

1 MR. CAREY: The only thing I would say is I don't
2 know when it was received in the clerk's office. We would
3 have had it hand-delivered on the 20th, and I know it wasn't
4 docketed until the 28th. And I don't know --

5 THE COURT: Oh, okay. I mean, that's -- I don't
6 dispute that. That may be the case.

7 I can tell you that I looked at the docket this
8 morning, and there is a received stamp May 28th. But is it
9 possible that it, you know, came in and sat in an, you know,
10 in basket? I don't know. I don't think -- I don't think that
11 the eight days is material.

12 MR. CAREY: It's really not. But to the point that
13 we were perhaps not on top of things by not delivering that
14 for eight days, I don't -- it's not my practice, and I don't
15 know that that's the case. That's the only reason I brought
16 it up.

17 THE COURT: All right.

18 Attorney Raynor -- actually, let me ask each of
19 you. Who has the burden of proof here on this first issue of
20 waiver of forfeiture? It's not addressed in the papers. I
21 have some thoughts on it, but I want to hear from counsel.

22 MR. RAYNOR: Well, Your Honor, I think that the
23 burden would be on Plaintiff in this case to establish whether
24 or not I've abandoned the argument altogether or I
25 inadvertently did not argue it on time.

1 And so I can testify unequivocally that I have
2 not abandoned any challenge to the audio tape. It was an
3 inadvertent --

4 (Attorney Raynor asked for clarification.)

5 MR. RAYNOR: It was an inadvertent omission.

6 As Your Honor indicated, the audio tape wasn't
7 filed until after I filed my Second Amended Complaint and they
8 filed their response to it. So that for well over a year and
9 a half the audio tape wasn't even a part of the case.

10 But my focus is that, okay, I'm not going to
11 say that there was no interview. Clearly, Officer Frum did
12 interview Mr. Freeland. That tape is --

13 (Attorney Raynor asked for clarification.)

14 MR. RAYNOR: That tape is a memorialization of the
15 conversation.

16 My argument is that even with the audio tape,
17 it doesn't rise to probable cause. That's my argument.
18 Because everything on this audio tape is consistent with what
19 was written in the incident report. He didn't say that Duncan
20 Freeland recognized my client as the person who did it. He
21 said he looks an awful lot like him. That's --

22 (Attorney Raynor asked for clarification.)

23 THE COURT: He looks an awful lot like him.

24 MR. RAYNOR: Right.

25 THE COURT: Slow down just a little bit for our

1 court reporter, if you would.

2 MR. RAYNOR: Yes.

3 So I feel the crux of the argument isn't the
4 authenticity of the tape. I'm not going to sit here and say
5 that there's no conversation, that he's lying. I'm not going
6 to say that. Okay. The tape, there is a tape. But it does
7 not rise to probable cause. It doesn't change anything.

8 THE COURT: All right.

9 MR. RAYNOR: I'm not saying that there is --

10 THE COURT: I understand -- I understand your
11 argument. And I appreciate it, because at some point I would
12 be obliged to ask you, Attorney Raynor, you know, are you
13 aware of any basis to believe that what is recorded on that
14 audio is anything other than the voices of Officer Frum and
15 Mr. Freeland. And I assume the answer to that question, based
16 on your argument, is that, no, you don't dispute -- those are
17 their voices.

18 MR. RAYNOR: Correct.

19 THE COURT: All right. And, you know, I now -- I
20 got a transcript of that recording. You do now as well.

21 MR. RAYNOR: Yes.

22 THE COURT: All right. So I think that that --
23 we've jumped ahead to the second part of this, but it's
24 productive. I mean, we're not going to have any dispute
25 regarding authenticity.

1 MR. RAYNOR: Right.

2 THE COURT: Or accuracy of the words stated. Is
3 that right?

4 MR. RAYNOR: Right. I briefed the issue for the
5 record, but, no, here today, I'm not going to --

6 THE COURT: All right. All right. So whether you
7 waived the right to challenge that or not, at least as to that
8 portion of the recording, you don't dispute its accuracy or
9 authenticity.

10 MR. RAYNOR: Right.

11 THE COURT: All right. Well, that narrows the scope
12 of our inquiry considerably.

13 Now, what that -- I don't think that -- what
14 that acknowledgment or concession on the record completely
15 eliminates, though, is the issue is completeness. All right?
16 And that's something if I get to that issue -- there's been no
17 waiver of that -- then we'll talk about that later.

18 Attorney Carey, I think Attorney Raynor and I
19 have done a lot of your work on this first issue, but what
20 else should I know in -- regarding the first issue of
21 forfeiture or waiver?

22 MR. CAREY: Can I ask something first? Because I'm
23 confused about something. And I apologize; it's embarrassing
24 for me. Both Mr. Raynor and you have indicated that we've
25 submitted a transcript. Did we submit the transcript of the

1 audio?

2 THE COURT: Oh, maybe it's my transcript. I thought
3 you indicated you had one.

4 MR. CAREY: I have one, but I don't know that I -- I
5 don't know.

6 THE COURT: Oh, I apologize. I -- this is from my
7 superb, on-top-of-it court reporter, Ms. Ferguson.

8 MR. CAREY: Oh, so she transcribed it.

9 THE COURT: She transcribed it. It's not of record.
10 It's just one for -- so I wouldn't have to continue to listen
11 to it during the hearing.

12 MR. CAREY: Okay. And I've known Janis a long time.
13 I'm willing to go with her transcript, but I have a -- we had
14 Sonya Hoffman, who is an Erie County court reporter, she
15 transcribed it. And I'm sitting here thinking to myself,
16 going, I don't think I produced that.

17 THE COURT: You referenced it, and I assumed that
18 that was the one I was looking at. I see that this is
19 transcribed by Ms. Ferguson.

20 I know both of these court reporters, and I
21 suspect that perhaps, you know, a different dash or comma in
22 places, but it should be substantially the same.

23 Attorney Carey, we can work from yours. I
24 mean, that's -- I'm fine with that. Or I can make
25 copies of --

1 MR. CAREY: I made copies for -- to act as an
2 exhibit today.

3 THE COURT: Great.

4 MR. CAREY: Which if the Court has no objection, I
5 was just going to hand it up.

6 THE COURT: Attorney Raynor, if you have any -- take
7 a minute to review it. It's a little hard for you to verify
8 the accuracy because you haven't listened to the audio yet.
9 But I'm going to take a look at it, and if it appears
10 consistent with Ms. Ferguson's transcription, I'm going to
11 admit it.

12 MR. CAREY: I note that there -- we said in our
13 brief that we would submit an affidavit of Sonya Hoffman, but
14 we didn't. There is a certification, however, attached.

15 THE COURT: I -- I accept her certification. It
16 covers any hearsay or other objection.

17 MR. CAREY: So you -- I'll let you review it. I'm
18 sorry. That's what you said you were going to do.

19 THE COURT: Yeah, this is verbatim, precisely what
20 Ms. Ferguson transcribed for me, except perhaps, you know, a
21 dash here or a comma there. I'm not even seeing those.

22 MR. CAREY: I will tell you, I have found a couple
23 things in Sonya Hoffman's transcript that I disagree with, but
24 they don't go to the substance of any issue.

25 I mean, for example, on -- and, actually,

1 Officer Frum told me he found one as well.

2 But on Page 4, Line 8 is the answer, "Yeah."
3 And then Line 9 is a question. But, actually, from Line 9
4 through 11, that's a continuation of the answer.

5 So that's one thing that I found. What I
6 think, when you listen to the recording with the transcript in
7 front of you, you'll agree with me that Lines 9 through 11 on
8 Page 4 are a continuation of the answer and not a question.

9 And the other thing I found, too, is at the
10 very top of Page 5 --

11 THE COURT: Hold on a second. Let me just compare
12 that real quick.

13 All right. So your Line 9 starts with, "Okay."
14 Ms. Ferguson transcribed this exchange as follows: At Line 8
15 of her transcript, "Answer: Yeah." Line 9. "Okay," as a
16 question. Line 9 says, "Question: Okay." Line 10, "Answer:
17 Because he sent -- like, Evan also sent two other pictures,
18 which looked like they were -- he had shorter hair in those,
19 but I have no idea when they were taken, so --" end of answer.

20 And then Line 13. "Question: Okay. So how
21 many pictures did Evan actually send you," question mark.

22 MR. CAREY: Right. And I think that's substantially
23 similar. The thing is, is that in Sonya Hoffman's transcript,
24 Lines 9 through 11, she has that as being a question, and it
25 was actually a continuation of Duncan Freeland's answer. So

1 it's a matter of the "Q", indicating question, should be "A"
2 indicating the continuation of the answer. And then there
3 were a couple of words that were different.

4 THE COURT: Just slightly. Well, at any rate, just
5 so that everyone has the benefit of both transcriptions, I
6 will have a copy of Ms. Ferguson's transcription made.

7 (Discussion held off the record.)

8 THE COURT: All right. I'll make a copy of that
9 transcript. I don't believe that there's any material
10 difference in the substance. And I'm going to admit
11 Defendant's Exhibit B.

12 Is there any objection, Attorney Raynor?

13 MR. RAYNOR: No, Your Honor.

14 THE COURT: Then I'm going to admit it as
15 Defendant's Exhibit B. And I'm going to mark Miss Ferguson's
16 transcription, which she prepared at my request, as Court
17 Exhibit 1. And I'll get copies to counsel.

18 Attorney Carey, I guess where the colloquy kind
19 of leads us, whether Mr. Raynor or Mr. Pinkney waived the
20 challenge to authenticity -- a challenge to authenticity or
21 accuracy of the words that appear on the audio tape, it
22 strikes me that that issue is now moot because counsel has
23 conceded that he has no basis on which to dispute those.

24 But I don't -- I find that that is not the
25 conclusion of the question, though, because there is the issue

1 of completeness.

2 And I think you guys all know, I don't try to
3 hide the ball. When something is on my mind -- when I read
4 this transcript, it appeared to me to include -- the interview
5 included quite a lot of declaratory statements -- in other
6 words, statements not in the form of a question -- which
7 raised the issue in my mind which I'd like to hear from the
8 Defendants, including Officer Frum specifically, as to whether
9 there was a discussion that preceded the actual recorded
10 interview.

11 I mean, just by way of example, there's a
12 question in Ms. Ferguson's transcript on Page 3 at Line 9 --
13 or, actually, let me -- you don't have that, so let me use the
14 transcript that's been marked as Exhibit B on behalf of the
15 Defendants.

16 All right. Early in the transcript we have an
17 interview of an individual identified as Evan Haines. And the
18 question at Page 16 of Exhibit B is, "Okay. So Evan, you had
19 stated earlier that Evan sent you a picture." I don't know
20 that that was stated earlier in the recorded interview.

21 MR. CAREY: I'm prepared to address that, because I
22 had the same question this morning to Officer Frum, in talking
23 to him about did you conduct a pre-interview interview.

24 THE COURT: Okay.

25 MR. CAREY: And so if you want me to get into it,

1 I'll ask him. We can put him --

2 THE COURT: Why don't you -- I don't want to -- you
3 can approach your presentations however you see fit and call
4 whomever. But I do have those questions, and if Officer Frum
5 is prepared to address them, I think that's appropriate.

6 MR. CAREY: He is.

7 THE COURT: All right, very well.

8 Officer Frum, could you come forward to be
9 sworn.

10 JARED MICHAEL FRUM, a witness herein, having been first
11 duly sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. CAREY:

14 Q. Please state your name and occupation for the
15 record.

16 A. Jared Michael Frum. I am a patrol officer from
17 Meadville City Police Department.

18 Q. How long have you been employed in that capacity?

19 A. I'm in my fourteenth year, I believe.

20 Q. All right. I want to take your attention back to
21 April of 2019. Were you employed in the capacity as a police
22 officer for the City of Meadville at that time?

23 A. Yes.

24 Q. Did you become involved in the investigation of the
25 assault of Rhett Happel that occurred on April 7th of 2019?

1 A. Yes.

2 MR. CAREY: If I can lead him for just one second.

3 THE COURT: Sure.

4 BY MR. CAREY:

5 Q. You came across Mr. Happel as he was walking down
6 the street after he was assaulted; is that correct?

7 A. Yes.

8 Q. That was, what, during third shift?

9 A. It would have been the night, yes. We have two
10 shifts. We work 12-hour shifts.

11 Q. Okay.

12 A. The night shift.

13 Q. And you took the initial information -- actually,
14 probably not from Happel, but from the guys he was with as to
15 what happened.

16 A. Yes, that's correct.

17 Q. When you got done taking that initial information,
18 did you investigate it, or did you turn that in to the
19 department to be assigned to someone?

20 A. I did my initial report, and it went from there.

21 Q. Would you typically have been assigned that that's
22 your case; you do all the follow-up investigation and make the
23 charging decisions?

24 A. Not necessarily, because of where -- Mr. Happel got
25 sent to Erie for treatment. Most cases, we turn that over to

1 a detective because our victim is no longer in the City of
2 Meadville.

3 Q. And was that what you thought was going to happen
4 with this particular investigation?

5 A. Yes.

6 Q. Now, a couple of days after that, were you asked by
7 any of your superiors to do any follow-up investigation?

8 A. Yes.

9 Q. Can you tell me who gave you the assignment and what
10 the assignment was.

11 A. The -- Chief Tautin gave me the assignment to
12 interview a witness.

13 Q. Okay. Tautin is T-A-U-T-I-N. Is that the correct
14 spelling, sir?

15 A. Yes.

16 Q. All right. So Chief Tautin asked you to go and
17 interview a witness.

18 A. That's correct.

19 Q. Is that something you normally would do?

20 A. Yeah. I mean, I interview people.

21 Q. All right. Where was -- who was the witness? Did
22 you know at that time?

23 A. They told me it was -- his name was Duncan Freeland.

24 Q. Okay. And how was it that you were to meet him?

25 A. I was to meet him at the Allegheny College security

1 office.

2 Q. Okay. Was it through the Allegheny County -- or,
3 excuse me -- Allegheny College security office that your
4 Department learned of the existence of this witness?

5 A. I honestly don't know.

6 Q. All right. But you learned of it through your
7 chief.

8 A. Yes.

9 Q. So I assumed there was a date and time when you were
10 supposed to meet him there.

11 A. Yes.

12 Q. When you got to the campus security office, was
13 Mr. Freeland there?

14 A. No.

15 Q. Did he arrive shortly after?

16 A. Yes.

17 Q. And did you introduce yourself?

18 A. Yes.

19 Q. Were you in uniform?

20 A. Yes.

21 Q. Did you tell him the purpose of you -- your meeting
22 with him?

23 A. Yes.

24 Q. What did you say to him?

25 A. That's when I asked him and talked to him about the

1 interview, basically. Keep everything chronological, be
2 specific, say specific things if they were said. And he
3 brought up --

4 Q. Let's stop for a second. So when you first met him,
5 you introduced yourself. Correct?

6 A. Yes.

7 Q. Did you tell him that you had been asked to come
8 there to meet with him because he had information?

9 A. Yes.

10 Q. Was anybody else present?

11 A. In the lobby of the area, it was Sergeant Merchbaker
12 and the secretary or dispatcher for their security office
13 there.

14 Q. So they were present during the introductions?

15 A. Yes.

16 Q. When you introduced yourself to Freeland and he
17 introduced himself to you.

18 A. Yes.

19 Q. Did you then go to a different location to conduct
20 the interview?

21 A. Yes.

22 Q. Was anybody with you during the interview?

23 A. No.

24 Q. When you sat down with Mr. Freeland, did you have a
25 recording device with you?

1 A. Yes.

2 Q. Was it a cassette or digital recording device?

3 A. Digital recording device.

4 Q. Had you ever operated that before?

5 A. Yes.

6 Q. You were familiar with it?

7 A. Yes.

8 Q. When you sat down with Mr. Freeland, did you
9 immediately turn on the recording device?

10 A. Not immediately, no.

11 Q. Did you conduct an interview of Mr. Freeland at that
12 time without being recorded of the information that he had to
13 give you?

14 A. No.

15 Q. In other words, did you do a question-and-answer;
16 what did you see, what did you do, what was said, what
17 information do you have, before it was recorded?

18 A. No.

19 Q. You told us a second ago that in this introductory
20 meeting, pre recorded interview, that you said some things to
21 Mr. Freeland such as: If there was something that was said,
22 tell me exactly what was said. Correct?

23 A. Yeah, that's correct.

24 Q. I think you told me -- you might not have said it
25 here -- that if there were swear words or bad language used,

1 it's okay to say those?

2 A. Yes.

3 Q. Because you wanted to know exactly what was said.
4 Right?

5 A. Yes.

6 Q. You asked him, I believe you said a minute ago, to
7 keep it chronological?

8 A. Yes.

9 Q. Because it flows better.

10 A. Yes.

11 Q. Makes more sense that way, right?

12 A. Yes.

13 Q. Okay. And what else did you say to him about how
14 you wanted the interview process to go?

15 A. Be authentic, really.

16 Q. Can't think of anything more?

17 A. No. Other than, like I said, the topic did come up
18 of how he got the pictures. So I stopped him at that point.
19 I don't -- this is for the recording. I don't want to do
20 anything like that. That's not -- I don't want to talk about
21 that right now.

22 Q. Tell me how the topic of photographs came up.

23 A. He brought it up.

24 Q. What did he say?

25 A. Let's --

1 MR. RAYNOR: I want to object. That's hearsay.
2 That's not part of the report — part of the report. What
3 Duncan Freeland said is not on the record and cannot be
4 discovered through regular course.

5 THE COURT: All right. Your response?

6 MR. CAREY: Your Honor, it goes to how he proceeded,
7 why he proceeded the way he did. It's not being offered for
8 the truth of the matter.

9 THE COURT: Yeah, I tend to agree with Attorney
10 Carey on that. It's being offered for a non-hearsay reason
11 and will be only considered only for that reason and not for
12 the truth of the matter asserted.

13 Go ahead.

14 BY MR. CAREY:

15 Q. So I forget what the question exactly was, but how
16 did the issue of the existence of photographs that he had
17 seen, how did that come up? He offered it to you?

18 A. Yeah. I mean, my — my whole first spiel about
19 chronological and all that stuff, it — it stems from, like,
20 that. And then he brought up that the reason why he's here is
21 he saw pictures. He was given one by this Evan Haines.

22 Q. Okay.

23 A. And then that's when I said — at that point I
24 don't — I don't want to talk about anything other than being
25 chronological, make sure you be very, very specific,

1 everything that you can remember, because, obviously, it
2 happened how many days after the fact. Just reiterate those
3 types of things so that the interview itself is authentic and
4 genuine.

5 Q. So when you told him you didn't want to hear
6 anything more about what he actually saw, did he stop?

7 A. Yes.

8 Q. Did you ask him anything more about the information
9 that he had?

10 A. No.

11 Q. All right. At that point you start the interview?

12 A. Yes.

13 Q. Do you turn the recording on first?

14 A. Yes.

15 Q. Okay. And the recording that -- that we've offered
16 as an exhibit in this proceeding, did you listen to that?

17 A. Yes.

18 Q. When was the last time you listened to that?

19 A. This morning.

20 Q. Is that a complete recording of the interview from
21 start to finish?

22 A. Yes.

23 Q. Has it been edited in any way?

24 A. No.

25 Q. When you got done with that -- making that

1 recording, that interview, where did you go?

2 A. Back to the station.

3 Q. And do you take the recording device with you?

4 A. Yes.

5 Q. What do you do with it?

6 A. Plugged it into the computer and downloaded the --
7 the file to our police server.

8 Q. Okay.

9 A. Inside the incident folder that belongs to that
10 incident number.

11 Q. Okay. So that recording is downloaded to that
12 incident?

13 A. Yes.

14 Q. On the department's computer system.

15 A. That's correct.

16 Q. When we had -- when we obtained -- me, when I
17 obtained a copy of that recorded statement, was that a mere
18 drag and dump that was put onto a disk by somebody at the
19 department?

20 A. Yes.

21 Q. Do you know who did that?

22 A. Assistant Chief Stefanucci.

23 Q. Okay. And, again, you listened to the recording
24 today.

25 A. Yes.

1 Q. And it's a complete recording.

2 A. Yes.

3 Q. Have you reviewed the transcript that we submitted
4 today?

5 A. Yes.

6 Q. Is that complete -- or is that an accurate depiction
7 of that audio recording?

8 A. Yes.

9 Q. And I think we pointed out one of the discrepancies
10 that we found in the transcription when we were on the record
11 a minute ago. Correct?

12 A. That's correct.

13 Q. And there was also -- there was a second -- there
14 was something that you saw in that transcript. Correct?

15 A. Yes.

16 Q. What was that?

17 A. I believe the -- they used "Right" as Rhett's name.

18 Q. Okay. So there's a reference -- or there's a --
19 there's something in the transcript that uses the word
20 R-I-G-H-T, and it's really a reference to Rhett, R-H-E-T-T?

21 A. Yes, that's correct.

22 Q. Other than that, did you see any other
23 discrepancies?

24 A. No.

25 Q. Okay.

1 MR. CAREY: Your Honor, I mean, I don't know if you
2 want questioning about the statement itself. I think I
3 addressed the issue that you raised.

4 THE COURT: I'll give you an opportunity if it comes
5 up to do -- to redirect. Does that make sense to you?

6 MR. CAREY: Yes.

7 THE COURT: Yeah. Why don't we do that. That
8 way -- it may very well. So there may be some substantive
9 comments, but you might as well hear Attorney Raynor and --

10 MR. RAYNOR: Yes, Your Honor.

11 THE COURT: You may proceed.

12 CROSS-EXAMINATION

13 BY MR. RAYNOR:

14 Q. Good morning --

15 A. Good morning.

16 Q. -- Trooper Frum.

17 Trooper Frum, you indicated that at some point you
18 were alone with Duncan Freeland, correct?

19 A. That's correct.

20 Q. And that was after you had left Sergeant Merchbaker
21 and, I guess, the secretary at Allegheny College. Is that
22 correct?

23 A. That's correct.

24 Q. Okay. So you went to the back. And you did speak
25 with Mr. Freeland about the incident prior to doing the

1 recording; isn't that true?

2 A. I mean, not -- not the incident itself, really, no.
3 Just, like I said, when he said about receiving a picture from
4 Evan Haines, and then, like I said, I stopped him there. I
5 don't -- it's not --

6 Q. Okay. So you're saying that he told you he received
7 a picture from Evan Haines, but he didn't say who was in the
8 picture or what the person in the picture looked like. He
9 just said there was a picture, correct?

10 A. Not before the recording.

11 Q. Not before the recording. Okay. So I'm going to
12 direct your attention to Page 3.

13 THE COURT: This is Exhibit B, Attorney Raynor?

14 MR. RAYNOR: Yes, it is.

15 MR. CAREY: May I give him the copy --

16 THE COURT: Yes.

17 MR. CAREY: -- just to follow?

18 THE COURT: Yes, of course.

19 MR. CAREY: What page are we on, Mr. Raynor?

20 THE COURT: Page 3, I believe.

21 MR. RAYNOR: Page 3.

22 BY MR. RAYNOR:

23 Q. So I'm going to start with Line 8. "Question:
24 Okay. And you spoke with friends of Rhett --"

25 (Attorney Raynor asked for clarification.)

1 THE COURT: Line 8 reads, "Question: Okay. And you
2 spoke with friends of Rhett," question mark. And the answer
3 was, "Yeah."

4 MR. RAYNOR: Yeah.

5 BY MR. RAYNOR:

6 Q. Line 10, "Question: Who was that?" Line 11, your
7 answer, "Evan Haines." Line 12 -- or, "Question," rather,
8 "And." Line 13, Mr. Freeland's answer, "And his mother."
9 Line 14, "Question: And Rhett's mother?" Line 15, "Answer:
10 Yeah. Yeah."

11 So you got into the entire circumstances surrounding
12 Mr. Freeland's review of the photographs presented by Evans
13 Haines on behalf of his mother. You discussed that with
14 Mr. Freeland before the tape began recording, correct?

15 A. Yes. With Evan Haines, yes.

16 THE COURT: I'm confused. And it's probably me.
17 The question in Line 8, "Okay. And you spoke with friends of
18 Rhett," that appears to be in the form of a declarative
19 statement, as opposed to a question. Or it's a question
20 seeking confirmation of information already known.

21 And I'm looking back earlier in the transcript,
22 and I may have missed it, but I don't see where Mr. Freeland
23 previously stated that he had spoken with friends of Rhett's,
24 so the implication is that that was information he shared
25 prior to the recording device being turned on.

1 THE WITNESS: That was -- okay. Now I understand.

2 THE COURT: That was your -- is that your question?

3 MR. RAYNOR: Yes, Your Honor.

4 THE COURT: All right.

5 THE WITNESS: When I was directed by Chief Tautin to
6 go talk to him, he told me that Duncan Freeland had received
7 photos from Rhett's friends. So the declarative statement is
8 from Chief Tautin basically telling me why I was going to
9 interview this Duncan Freeland.

10 THE COURT: I think -- I do have to ask you, though,
11 rather than repeating information to the witness, wouldn't
12 standard procedure be to ask a question, how did you first,
13 you know, learn of the investigation or the incident or
14 something, then, that -- rather than providing information to
15 the witness, allows the witness to tell his or her story and
16 understanding?

17 THE WITNESS: I agree with you, yes.

18 THE COURT: All right. Go ahead.

19 MR. RAYNOR: Thank you, Your Honor.

20 BY MR. RAYNOR:

21 Q. Okay. I'm going to ask you to go further down the
22 page, and I'm going to begin with Line 19, your question.

23 "And in this picture, who was all in it?" Your answer:

24 "Jared Shaw and Kobe Pinkney."

25 Do you recall that?

1 A. That's his answer of my question.

2 Q. Right, right. His answer, right.

3 A. Yes.

4 Q. So Mr. Freeland told you that he recognized Kobe
5 Pinkney from the photograph.

6 A. Yes.

7 Q. And he recognized Jared Shaw from the photograph.
8 Correct?

9 A. Yes.

10 Q. Okay. But at this point he had not told you that
11 Kobe Pinkney was the person that punched Rhett Happel, had he?

12 A. Not at this time.

13 Q. And then go further. I'm going to Line 4, Page 1,
14 his answer. "I recognized Kobe as looking an awful lot like
15 who I saw --"

16 (Attorney Raynor asked for clarification.)

17 THE COURT: It states, "Answer: I recognized Kobe
18 as looking an awful lot like who I saw throw the punch at the
19 bar."

20 BY MR. RAYNOR:

21 Q. Okay. That was Mr. Freeland's answer to your
22 question, correct?

23 A. That's correct.

24 Q. So Mr. Freeland knew Kobe Pinkney, told you he
25 recognized Kobe Pinkney from the photograph, but despite all

1 that, he then says Kobe looked like the assailant. Correct?

2 A. At this time, correct.

3 THE COURT: I'm sorry; Attorney Raynor, where does
4 it say that Duncan Freeland -- where does it say in this
5 statement prior to that sentence that Mr. Freeland knew Kobe
6 Pinkney? Maybe it does, but I --

7 MR. RAYNOR: Well, on Page 3 he says -- he's asked
8 who is in the picture, and he says Kobe Pinkney and Jared
9 Shaw.

10 MR. CAREY: Lines 19 and 20.

11 THE COURT: I see. All right. Who is in the
12 picture. All right. All right.

13 BY MR. RAYNOR:

14 Q. So, once again, Mr. Freeland knew Kobe Pinkney, and
15 he tells you later that Kobe looked like the guy. Correct?

16 A. That's correct.

17 Q. Now, I'm going to go to Page 8 -- oh, I'm sorry,
18 Page 5. You asked a question beginning on Page 4 at Line 25.
19 Your question is, "Okay. And -- but you said you just seen
20 him tap right on his shoulder, looked around, you seen Kobe
21 throw the punch." And Mr. Freeland's answer is "yeah",
22 correct?

23 A. That's correct.

24 THE COURT: Stop there, because you lost me in the
25 transcript. What page and what line did you read from?

1 MR. RAYNOR: Page 5, Line 1.

2 MR. CAREY: Page 4, Line 25.

3 MR. RAYNOR: Page 4, Line 25.

4 THE COURT: I was going to say, I was looking, and
5 that's not what it says on my transcript. So I just -- all
6 right.

7 MR. RAYNOR: I'll ask him again.

8 BY MR. RAYNOR:

9 Q. On Page 4, Line 25, you begin, "Question: Okay.
10 And -- but you said you just seen him tap right on the
11 shoulder, looked around. You seen Kobe throw the punch."
12 Mr. Freeland's answer, Line 3 on Page 5, is, "Yeah."

13 Do you recall that?

14 A. That's correct.

15 Q. So you declare that your question is Kobe Pinkney,
16 and Mr. -- all Mr. Freeland says is, "Yeah," correct?

17 A. That's correct.

18 Q. To repeat, he never said in this transcript or this
19 recording, I saw Kobe Pinkney throw the punch. He never says
20 it.

21 A. He agrees to my answer.

22 Q. Well, he says, "Yeah."

23 How is how old is Duncan Freeland at this time? He
24 was in college, right?

25 (Attorney Raynor asked for clarification.)

1 THE COURT: How old --

2 Q. How old is Duncan Freeland at this time? He was in
3 college. Did you get his age?

4 A. I mean, his date of birth is at the beginning of the
5 transcript. So he was born in '96. I'm not quick at math.

6 Q. So he's about 22, 23 years old? You would agree?

7 A. However, yeah.

8 Q. Okay. So you declared Kobe the one who did it, he
9 says yeah. But prior to that he told you Kobe just looked
10 like the person, correct?

11 A. That's correct.

12 MR. RAYNOR: Based on that, Your Honor, I have no
13 further questions.

14 THE COURT: Before that, before Attorney Carey
15 redirects, I have a couple of questions based on my -- what I
16 just heard.

17 I'm reading through this, and I see the
18 references to hair and braids. At any time during the
19 recorded interview or the discussion with Mr. Freeland that
20 preceded that interview, did he tell you any more information
21 about the attacker's hair? Its length, anything about the
22 braids, anything at all?

23 THE WITNESS: No, Your Honor.

24 THE COURT: All right. Did you ask?

25 THE WITNESS: No, Your Honor.

1 THE COURT: I think I already asked you about -- or
2 I raised with Attorney Carey the sentence, "And you spoke with
3 friends of Rhett," and he examined you and he explained that
4 the reason why you knew that was -- was based upon information
5 you had received from your Chief?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: All right. I understand.

8 You then go on to state at Line 16 as a
9 question: "Okay. So Evan, you had stated earlier that Evan
10 sent you a picture." That sounds like you're attributing that
11 information as being supplied by Mr. Freeland, as opposed to
12 your chief. Did he tell you earlier in the interview? Did I
13 miss it? Or did he tell you --

14 THE WITNESS: No, that preceded. Like I said, when
15 he started talking about Evan Haines sending him a picture,
16 that's when I stopped him.

17 THE COURT: All right. And that's what you're
18 referring to there.

19 THE WITNESS: Yes.

20 THE COURT: All right. I understand.

21 Regarding the braids, did Kobe Pinkney have
22 braids when you arrested him?

23 THE WITNESS: I did not -- I wasn't there when he
24 was placed under arrest.

25 THE COURT: You don't know?

1 THE WITNESS: I really don't know.

2 MR. RAYNOR: I know he didn't have braids. From
3 what I've discovered.

4 THE COURT: On Page 4, in response to -- if you look
5 on Page 4, Line 9, this may be one of the areas, Attorney
6 Carey, you wanted to correct. I'm not sure.

7 "Question: Okay. He sent like -- Evan also
8 sent two other pictures which looked like they were -- he had
9 shorter hair in those, but I have no idea when they were
10 taken, so." That -- that sounds like an answer. Is that --

11 THE WITNESS: That's correct. "Okay" is -- is me.

12 THE COURT: Okay.

13 THE WITNESS: And then he starts back --

14 THE COURT: All right.

15 THE WITNESS: "He sent --" so where it says, "He
16 sent," like, that is actually Mr. Freeland.

17 THE COURT: All right. Did Mr. Freeland disclose
18 during the interview when any of the pictures that he was
19 basing his identification on were taken?

20 THE WITNESS: I -- I believe he says somewhere that
21 he doesn't remember when they -- doesn't -- has no idea when
22 they were taken, in the same line.

23 THE COURT: Yeah. Well, he said, "I think there
24 were a total of three pictures," and as to two of them, it
25 says that he had shorter hair, "but I have no idea when those

1 were taken."

2 I guess my question is did he ever tell you
3 when the other picture, the third picture was taken?

4 THE WITNESS: No, Your Honor.

5 THE COURT: All right. And you didn't ask about
6 that, correct?

7 THE WITNESS: No, Your Honor.

8 THE COURT: And then later on that page, at Line 18
9 you ask a question -- or you state, "So same facial features.
10 Same." "Answer: Yeah."

11 You agree with me that that -- your statements,
12 "So same facial features. Same," is not in the form of a
13 question, is it?

14 THE WITNESS: I believe my train of thought at that
15 point was I was going to ask more questions -- like, more
16 questions, and then he cut me off and just answered "yeah".
17 And then I didn't go back to --

18 THE COURT: Well --

19 THE WITNESS: -- my other statement.

20 THE COURT: -- I mean, I've got to ask you, I
21 mean -- I mean, you and I both have eyes, we both have a nose,
22 we both have a mouth, so in that general respect we have the
23 same features. But what -- but either during the recorded
24 interview or during the discussion that preceded it, did you
25 ever ask Mr. Freeland, what do you mean by "the same

1 features"? Did he describe a nose, did he describe a
2 thickness of lips? Did they have thin lips, thick lips, big
3 nose, little nose, you know, eye color? Did he give you any
4 information?

5 THE WITNESS: No, Your Honor.

6 THE COURT: All right. So that wasn't discussed
7 before the recorded interview; is that right?

8 THE WITNESS: No, Your Honor.

9 THE COURT: On that same page, Page 4, Exhibit B,
10 there's a question. And this is you speaking. "And you know
11 him from years of being his --" and before you could complete
12 the sentence, he jumps in and says, "Yeah, being in the same
13 hall, being his RA."

14 THE WITNESS: Yes.

15 THE COURT: If he hadn't interrupted you, you were
16 going to note those facts, were you not; that he knew him from
17 college as an RA and being in the same hall?

18 THE WITNESS: I mean, I may have -- like, for being
19 in college, we're sitting in the college security office.

20 THE COURT: But clearly you were about to recite
21 something that you had learned, because you say, you knew
22 him -- you know him. You were about to recite something that
23 you learned before this interview. Because that's not
24 covered. Right?

25 THE WITNESS: Not -- yes. Yes, Your Honor.

1 THE COURT: On Page 5, there's a question, again in
2 the form of a -- declarative statements. "You didn't hear
3 anything being said. It didn't look like anything was being
4 said."

5 When did you learn that, such that you sought
6 confirmation that Mr. Freeland did not hear anything being
7 said and it didn't look like anything was being said?

8 THE WITNESS: I guess it's just how I worded the
9 question at that point. I wasn't -- I -- I see where you're
10 saying it looks declarative, but I don't -- that's just
11 apparently how I talk, unfortunately.

12 THE COURT: Yeah. As opposed to saying, did you
13 overhear anyone saying anything.

14 THE WITNESS: Yes.

15 THE COURT: All right. There's a difference in my
16 court transcription from this one. It may explain --
17 actually, it's not material.

18 Other than Duncan Freeland, did you interview
19 any other witnesses?

20 THE WITNESS: No, Your Honor. No one came forward.

21 THE COURT: What about the bartender, Kristen
22 Ferguson?

23 THE WITNESS: I talked to her the next day, and our
24 Detective also talked to her, and she stated that she was
25 intoxicated and doesn't remember anything from that night.

1 THE COURT: All right. And what about Rhett Happel?
2 Did you interview Rhett Happel with his mother?

3 THE WITNESS: We have a recording, but I don't -- I
4 don't -- I spoke to him over the phone with his parents at the
5 hospital, just to follow up with him quickly and see if he
6 remembered anything.

7 THE COURT: Do I understand you, then, there is a
8 recorded -- some statement from Rhett Happel, but it was not
9 taken by you?

10 THE WITNESS: I don't -- don't remember.

11 THE COURT: Did any other officer or member of the
12 Meadville Police participate in this investigation, conduct
13 any investigation other than what you personally performed?

14 THE WITNESS: I'm trying to think. At least --
15 Assistant Chief Stefanucci would be the main other person, I
16 believe. Our detectives were at training that whole week.
17 Chief Tautin may have been involved. I don't --

18 THE COURT: Are there investigative materials
19 gathered or generated by either of those individuals in the
20 records of the Meadville Police Department?

21 THE WITNESS: Unfortunately, at this point I don't
22 know, because the record has been expunged, and we don't -- we
23 have to --

24 THE COURT: I see. All right. And going back to
25 Mr. Freeland, either before the interview itself, during your

1 discussion immediately preceding the interview, or during the
2 recorded interview, did Mr. Freeland tell you anything about
3 where he was standing relative to the assault? In other
4 words, how -- for example, the difference between himself and
5 the assault upon Mr. Happel.

6 THE WITNESS: I believe he said he was directly
7 behind Mr. Happel.

8 THE COURT: Did he tell you that before or after the
9 recorder was turned on?

10 THE WITNESS: I -- I don't remember.

11 THE COURT: If it's not in the transcript, does that
12 mean he told you before?

13 THE WITNESS: I mean, it could have been after as
14 well. I don't -- I don't -- I don't recall.

15 THE COURT: All right. Did he tell you anything
16 about -- did he identify any other witnesses who were in the
17 immediate vicinity; in other words, friends, college -- other
18 college students who might have been standing close to the
19 assault when it occurred?

20 THE WITNESS: No, Your Honor.

21 THE COURT: Because they were in line at the
22 bathroom, right?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: All right. What about the lighting or
25 anything like that in the bar at the time? Did he tell you

1 anything about that?

2 THE WITNESS: No, Your Honor.

3 THE COURT: Either before or during your interview.

4 THE WITNESS: No, Your Honor.

5 THE COURT: Okay. Did you consider any other
6 investigative materials prepared by anyone else, anyone other
7 than yourself when you prepared your Affidavit of Probable
8 Cause?

9 THE WITNESS: No, Your Honor.

10 THE COURT: All right. Attorney Carey?

11 MR. CAREY: Your Honor, just for the record, I think
12 we're well beyond what the scope was of his original testimony
13 and what's relevant for today. I'm certainly not going to
14 object to your questioning.

15 THE COURT: You can.

16 MR. CAREY: Well --

17 THE COURT: And I understand your concern. I will
18 tell you that the only thing relevant -- and I actually almost
19 stopped Attorney Raynor, you know, when we started to get
20 into, you know, the reasonableness or, you know, the
21 assumptions that may have been made. He came close, but I
22 don't think he crossed the line.

23 And the point -- my questions and the responses
24 that were given by Officer Frum will be considered solely
25 based upon -- I asked them -- let me rephrase that. I asked